

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
March 5, 2021

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Case Name: *State of Ohio v. Jordan Daniel Butler*
Case No: Champaign App. No. 2020-CA-14; T.C. Case No. 2019-CR-218
Panel: Tucker, Donovan, Hall
Author: Michael L. Tucker
Summary: Appellant's argument that his prison sentence was "excessive" and thus contrary to law, because the offenses to which he pleaded guilty did not trigger a presumption that a prison term was necessary, is without merit. Further, in arriving at its sentencing decision, the trial court did not inappropriately consider unindicted allegations of criminal conduct. Judgment affirmed. (Donovan, J., concurring in judgment only.)

Case Name: *State of Ohio v. Jaryld Portis*
Case No: Montgomery App. No. 28677; T.C. Case No. 2019-CR-3170
Panel: Tucker, Hall, Welbaum
Author: Michael L. Tucker
Summary: Appellant was convicted following a jury trial of two counts of felonious assault (deadly weapon) and one count of aggravated robbery. The convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court did not abuse its discretion by giving a jury instruction on complicity. The record does not demonstrate prosecutorial misconduct. Finally, since we find no error, the assertion of cumulative error fails. Judgment affirmed.

Case Name: *State of Ohio v. Eddie Ash*
Case No: Clark App. No. 2020-CA-22; T.C. Case No. 2019-CR-61B
Panel: Tucker, Donovan, Hall
Author: Mary E. Donovan
Summary: The trial court did not err when it overruled appellant's petition for post-conviction relief without a hearing. Defense counsel's decision to forego a suppression hearing was a tactical decision and therefore not a proper basis for a finding of ineffective assistance of counsel.

Defense counsel could have reasonably believed that pursuing a motion to suppress would have been futile, and the better course of action was to advise appellant to plead to a lesser offense with a shorter recommended sentence. Judgment affirmed.

Case Name: *State of Ohio v. Ne'Aarick L. Pooler*
Case No: Montgomery App. No. 28619; T.C. Case No. 2019-CR-256
Panel: Tucker, Donovan, Hall
Author: Mary E. Donovan
Summary: State's appeal. During a jury trial for rape, the trial court did not abuse its discretion in admitting the complaining witness's admission to a counselor that she had engaged in prostitution in the past. Application of the rape shield law to exclude such evidence would have infringed on appellee's right to present a defense of consensual sex and to confront his accuser with a motive to fabricate the allegation. (Tucker, P.J., concurring.) (Hall, J., dissenting.)

Case Name: *State of Ohio v. Darrion Oliver*
Case No: Montgomery App. No. 28774; T.C. Case No. 2018-CR-2905
Panel: Tucker, Donovan, Hall
Author: Mary E. Donovan
Summary: The jury selection process utilized by the court did not constitute error, and certainly not plain error. Appellant exhausted his peremptory challenges before a particular juror, who was a retired police officer, became a member of the jury pool. At that point, appellant was limited to a challenge for cause, for which he acknowledged there was no basis, because the juror affirmed that he could be fair and impartial. However, the trial court's judgment entry erroneously suggests that the jury found appellant guilty of repeat violent offender specifications, when in fact the trial court made those findings; thus, the matter is remanded for the court to issue a nunc pro tunc entry reflecting the fact that the court found appellant guilty of the specifications and citing the applicable code section related to the specifications. In all other respects, judgment affirmed.

Case Name: *William R. Stout v. Columbia Gas of Ohio, Inc., et al.*
Case No: Clark App. No. 2020-CA-42; T.C. Case No. 2017-CV-131
Panel: Tucker, Donovan, Welbaum
Author: Mary E. Donovan
Summary: The trial court did not err in granting summary judgment in favor of appellees on appellant's claims for abuse of process, defamation, and civil conspiracy. Appellant argued that appellees' prior lawsuit against him related to non-payment for gas services was meritless and without probable cause. However, the trial court correctly found that an abuse of process claim did not lie. Furthermore, the doctrine

of absolute privilege barred appellant's defamation claim. Appellant's civil conspiracy claim was based upon his allegations of abuse of process and defamation, and since he failed to establish the existence of any genuine issue of material fact on those claims, his claim for civil conspiracy was also subject to summary judgment. Judgment affirmed.

Case Name: *State of Ohio v. Timothy D. Wright*
Case No: Clark App. No. 2020-CA-33; T.C. Case No. 1998-CR-364
Panel: Tucker, Donovan, Hall
Author: Michael T. Hall
Summary: The trial court did not err in overruling appellant's "motion for resentencing," which he filed two decades after his conviction on numerous felony offenses. To the extent that the motion in substance sought post-conviction relief for constitutional violations, it was governed by R.C. 2953.21. Under that statute, the motion was untimely, and the appellant failed to establish, among other things, that he was "unavoidably prevented" from discovering the facts upon which his arguments relied. In any event, regardless of how the appellant's motion was characterized and regardless of any timeliness problems, res judicata applies. Appellant's arguments all could have been raised on direct appeal because they did not depend on any evidence outside of the trial record. The issues appellant raises also did not render the jury's verdict or his sentence void. Judgment affirmed.

Case Name: *State of Ohio v. David Mundy*
Case No: Clark App. No. 2020-CA-23; T.C. Case No. 2019-TRC-9764
Panel: Tucker, Donovan, Hall
Author: Michael T. Hall
Summary: The trial court did not err by overruling appellant's motion to suppress. A trained and experienced police officer's visual estimation of speed is sufficient to justify a traffic stop. Judgment affirmed. (Donovan, J., concurring in judgment only.)

Case Name: *James Froelich, Administrator of the Estate of Steven D. Rogers v. Darryl Rogers and Gary and Ava Rogers*
Case No: Montgomery App. No. 28916; T.C. Case No. 2020-MS-C-138
Panel: Tucker, Hall, Welbaum
Author: Michael T. Hall
Summary: The probate court violated appellant's constitutional right to due process by determining the decedent's heirs for purposes of Ohio's Statute of Descent and Distribution without giving appellant an opportunity to be heard on the issue. Judgment reversed and remanded.